



James B. Wright  
Senior Attorney

REC'D TN  
REGULATORY AUTHORITY  
1411 Capital Boulevard  
Wake Forest, North Carolina 27587-5900  
Telephone: 919-554-7587  
Fax: 919-554-7913

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OFFICE OF THE  
EXECUTIVE SECRETARY  
May 6, 1999

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

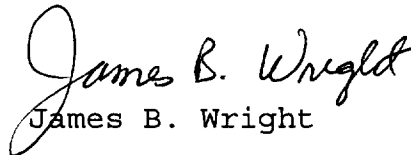
RE: Docket No. 98-00626 (UTSE Annual Price Cap Adjustment)  
UTSE Motion to Strike Portions of CAD's Prefiled  
Testimony

Dear Mr. Waddell:

Enclosed for filing in the above case are the original and thirteen copies of United Telephone-Southeast, Inc.'s Motion to Strike Portions of the Consumer Advocate's Prefiled Testimony Relating to Pay Telephones.

Please contact me if you have any questions regarding this filing.

Sincerely yours,

  
James B. Wright

JBW:sm

Enclosures

CC: Consumer Advocate (with enclosure)  
Guy Hicks (with enclosure)  
Paul Monk (with enclosure)  
John Hamlin (with enclosure)  
Steve Parrott (with enclosure)  
Dennis Wagner (with enclosure)  
Laura Sykora (with enclosure)

#17235

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. )  
TARIFFS TO REFLECT PROPOSED CHANGES ) DOCKET NO. 98-00626  
UNDER PRICE REGULATION PLAN )

**UNITED TELEPHONE-SOUTHEAST, INC.**  
**MOTION TO STRIKE PORTIONS OF CAD'S PREFILED TESTIMONY**  
**RELATING TO PAY TELEPHONE**

COMES NOW United Telephone-Southeast, Inc. ("United"), and pursuant to Rule 7.02 of the Tennessee Rules of Civil Procedure, hereby moves the Tennessee Regulatory Authority ("Authority") to strike the pay telephone subsidy portions of the April 30, 1999 prefiled testimony and attachments of Robert T. Buckner, the proposed witness for the Office of the Attorney General, Consumer Advocate Division ("CAD") in this case. In support of this Motion, United shows the following.

At a March 9, 1999 prehearing conference in this case, the CAD sought to add as an issue matters relating to pay telephone subsidies (See Transcript of the March 9, 1999 prehearing conference, at pages 32-34 and 41-42, copies attached). The Hearing Officer ruled that the CAD would not be permitted to raise new issues at this stage (See page 5 of the April 16, 1999 *Report and Recommendation of the Pre-Hearing Officer From the Pre-Hearing Conference Held on March 9, 1999*, herein called "Hearing Officer's Report").

The CAD filed an objection to the Hearing Officer's Report regarding depositions; however the CAD did not take exception to any portion of the Hearing Officer's Report regarding the pay telephone subsidy issue. At an Authority Conference held on April 27, 1999, the Director's took action on the Hearing Officer's Report and issued an *Order Adopting Report and Recommendation of the Pre-Hearing Officer as Amended* ("Approval Order") dated April 30, 1999. The Approval Order confirmed the decision of the Hearing Officer that the pay telephone subsidy matter was a new issue not properly before the Authority in this case.

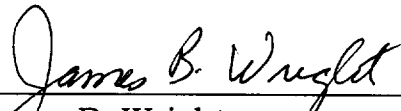
The CAD should have included in its Objection to the Hearing Officer's Report any alleged error regarding the Hearing Officer's decision on the issue of pay telephone subsidies. The CAD's failure to do so can not be remedied now by including the issue in prefiled testimony in direct violation of the Authority's Approval Order.

United would further point out that the issue of pay telephone subsidies is the subject of a separate contested case proceeding in Docket No. 97-00409. While access reductions resulting from the elimination of pay telephone subsidies have been tentatively approved, such amounts are not final but are in fact specifically subject to the outcome of the pay telephone docket contested case (See page 3 of May 2, 1997 Order in Docket No. 97-00409; the June 11, 1997 letter of United confirming the conditional nature of the rates, and

Transcript of the March 9, 1999 prehearing conference at pages 41-42, copies attached). Even the CAD's own prefiled testimony confirms that the access reductions are subject to the results of the outcome of pay telephone docket (See Attachment D to Mr. Buckner's April 30, 1999 prefiled testimony.)

For all of the above stated reasons, United asks that the Authority strike the following from the prefiled testimony of Mr. Buckner: Page 4, lines 29-30; page 5, lines 1-13; and Attachments D and E in that they relate only to the issue of pay telephone subsidies.

Respectfully submitted,  
UNITED TELEPHONE-SOUTHEAST, INC.

By   
James B. Wright  
Senior Attorney  
14111 Capital Boulevard  
Wake Forest, NC 27587-5900

May 6, 1999

# 172221

1 the issue here. And that's an issue here.

2 The second thing I have is the -- that  
3 there is one other issue that probably is implicit in  
4 what we have argued, but I think -- I just want to make  
5 sure that it's clear here also. In 1997, the Federal  
6 Government, in the pay phone decision, stated that no  
7 state commission could go forward with any rates that  
8 are predicated upon pay phone subsidies because they  
9 are -- pay phones are deregulated and they couldn't  
10 maintain those subsidies because they affected the  
11 competition.

12 There will be an issue -- I think our  
13 overall issue regarding the adequacy of UTSE's filings  
14 will also address the appropriateness of including  
15 within any methodology and -- or whether or not a  
16 methodology put forth by UTSE incorporates in any  
17 subsidy -- any rates that would have within them pay  
18 phone subsidies. And so that rate is implicit in our  
19 statement, because we talk -- we adjust the adequacy of  
20 UTSE's filing. But I just wanted to make it explicit  
21 so that there will be no real surprises on that  
22 issue -- on an issue with respect to that. But that's  
23 the only other issue that I could see right now that --

24 HEARING OFFICER: Mr. Williams, if I  
25 recall correctly, the Authority had a pay phone docket

1     that addressed --

2                     MR. WILLIAMS:  They had a pay phone  
3     docket, but if you'll recall, the 1984 BellSouth case  
4     basically says that the agency cannot make contingent  
5     rates, so once the -- if they're going to do an order  
6     on UTSE, it needs to incorporate all the things that  
7     ought to be there based upon what would be regulated  
8     and deregulated, which makes it another issue whether  
9     they -- the agency has the authority to make contingent  
10    rates, when they know that -- when they know that  
11    those -- that the subsidy will be preempted.

12                    MR. HICKS:  Mr. Hearing Officer, this  
13    is Guy Hicks with BellSouth.  I would just object to  
14    adding any new issues at this late date.  I mean,  
15    Mr. Williams at one time said it was implicit in the  
16    current issue.  I think that's far from clear.  I don't  
17    think that the issue he proposed includes anything  
18    about pay phones, and I think that, to the extent he  
19    later characterized it as a new issue, I think that's  
20    more accurate.  This docket has been open a long time.  
21    There have been submissions of issues.  There's been  
22    prehearing conferences, and we just very much oppose  
23    and object to adding a new issue here at this late  
24    date.

25                    MR. WILLIAMS:  The purpose of this

1 proceeding is to present the issues so that the parties  
2 will not be surprised. We said that United's filing  
3 was not an appropriate filing, and to that extent, we  
4 could raise any issue that deals with the  
5 appropriateness of UTSE's filing. I merely do this to  
6 be sure that nobody can claim that they would be  
7 surprised by this. And obviously you shouldn't be  
8 surprised at it because it's -- UTSE and BellSouth both  
9 have pay phone proceedings ongoing.

10 MR. HICKS: Well, I would just go  
11 back, Mr. Hearing Officer, to the reference in the  
12 record that I read earlier, during the prehearing  
13 conference, in this proceeding. It was not from an  
14 earlier proceeding. It's not an old reference or  
15 anything else. It's in this proceeding, where Chairman  
16 Malone specifically asked General Williams if the only  
17 issue were the application of the methodology and he  
18 said yes. And I think that this is an attempt to delay  
19 and slow things down, and we should not be allowing, at  
20 this late date, additional issues to be brought in.

21 MR. WILLIAMS: And it is the  
22 application of the methodology.

23 HEARING OFFICER: Mr. Williams, I've  
24 given you a number of times to respond, and I believe  
25 you've addressed whether or not you believe that this

1                   Now, as far as the directory  
2 publishing revenues are concerned, I think there is an  
3 issue as to whether or not a price-regulated company is  
4 required to impute those directory revenues. Now, I  
5 mean, you all have laid out your positions with regard  
6 to that. The Consumer Advocate has and United has.  
7 But I think that it's an issue that was raised in the  
8 December 1st filing, and it was an issue that had never  
9 been raised in 1996 or 1997, neither one of the  
10 proceedings, either Docket No. 96-01423 or Docket  
11 No. 97-01438.

12                   Finally, with regard to this new issue  
13 being raised about the pay phone issue, or the pay  
14 phone revenue, or imputation of the subsidies, that  
15 issue had never been raised, and this docket has been  
16 open for quite some time, as pointed out correctly by  
17 Mr. Hicks. If I recall correctly, United filed their  
18 original request for the tariff to go into effect  
19 sometime in early September of 1998. I believe it may  
20 have been September 14th or September 15th.

21                   MR. WRIGHT: Correct.

22                   HEARING OFFICER: September 15th,  
23 Mr. Wright?

24                   MR. WRIGHT: Yes.

25                   HEARING OFFICER: Okay. Obviously,



1 looking at our calendar now, that's been quite some  
2 time. I believe that the Consumer Advocate has had  
3 plenty of time to raise the issue with regard to the  
4 pay phones and the revenues associated therewith and  
5 how those should be dealt with. This agency currently  
6 has two proceedings that are dealing with pay phone  
7 subsidy issues, and I believe the issues with regard to  
8 pay phones will be addressed in those proceedings.

9 Now, that being said, I think so far  
10 we've accomplished several goals that were highlighted  
11 on the notice that was issued on March 4th. We've  
12 dealt with the petitions to intervene, and I believe  
13 we've fairly developed a statement of the issues.  
14 United Telephone has placed forward no issues, and that  
15 leaves me with no other choice but to accept the issues  
16 filed by the Consumer Advocate on December 1st. And I  
17 even believe, as Mr. Broemel did point out, that even  
18 in the motion to strike that was filed by United,  
19 Mr. Wright said, well, you know, we'll strike the  
20 language that explains the positions of the parties,  
21 but the issues are okay, you know, there's no reason to  
22 strike the issues themselves. So that being said, I  
23 believe we've developed a statement of the issues.

24 And that brings us to the last goal of  
25 this prehearing conference, and that is to dispose of

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MAY 06 1997

DIR-GOV'T &  
REG AFFAIRS-TN

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 2, 1997

IN RE: TARIFF FILINGS BY LOCAL EXCHANGE COMPANIES TO  
COMPLY WITH FCC ORDER 96-439, CONCERNING THE  
RECLASSIFICATION OF PAY TELEPHONES

DOCKET NO. 97-00409

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ORDER GRANTING INTERVENTION OF THE CONSUMER ADVOCATE,  
APPOINTING A HEARING OFFICER AND APPROVING TARIFFS FOR  
RECLASSIFICATION OF PAY TELEPHONES

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This matter is before the Tennessee Regulatory Authority (here "Authority") upon receipt of the above captioned tariff filings by the Incumbent Local Exchange Companies (here "ILEC's"). Each of the ILEC's and its respective tariff number are enumerated in footnote one. These proposed tariffs deregulate payphone service, offer central office functions to make a "dumb" phone equivalent to a "smart" phone, make available on a nondiscriminatory basis to all payphone providers any features or functions that the ILEC's offer to

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Tariff 97-011 Citizens Telecomm of TN  
Tariff 97-061 Peoples Telephone  
Tariff 97-063 West TN Telephone  
Tariff 97-065 Ooltewah-Collegedale  
Tariff 97-080 Ardmore Telephone  
Tariff 97-012 Citizens Tel. of the Vol State

97-121 United Telephone  
97-062 Crockett Telephone  
97-064 Claiborne Telephone  
97-066 Adamsville Telephone  
97-089 Loretto Telephone  
97-107 Millington Telephone

THE FOLLOWING TELEPHONE DATA SYSTEMS (TDS) COMPANIES:

Tariff 97-070 Tennessee Telephone  
Tariff 97-069 Humphreys County Tel.

97-071 Concord Telephone  
97-068 Tellico Telephone

its own payphones, and remove the subsidies to payphone operations from other classes of service. The proposed effective date of these tariffs is April 15, 1997. Three entities, Citizens Telephone of the Volunteer State, United Telephone and the TDS Companies (Concord, Humphreys, Tellico, Tennessee Telephone) identified subsidies to payphone operations of \$28,900, \$11,400 and \$81,700, respectively. Citizens Telephone of the Volunteer State and United Telephone filed appropriate tariffs to remove their respective subsidies from other classes of service. However, the TDS Companies refused to file tariffs to remove the payphone subsidy from other classes of service for several reasons. The remaining ILECs determined that there was no material subsidy to payphones from other classes of service.

On April 14, 1997, the Consumer Advocate Division, Office of the Attorney General (here "Consumer Advocate") filed a petition to intervene in Docket Number 97-00346. Since that docket has already been consolidated herein, the Consumer Advocate's Petition will be treated as though filed in this Docket. The Consumer Advocate agreed to waive notice so that its Petition to Intervene could be considered at this Conference. Further, the Consumer Advocate's intervention requests the Authority to convene a contested case proceeding to determine whether the proposed tariffs are just and reasonable and whether the filings comply with the Federal Telecommunications Act of 1996, and with the Order issued by the Federal Communications Commission (here "FCC") in Docket No. 96-128. The intervention, as filed by the Consumer Advocate, does

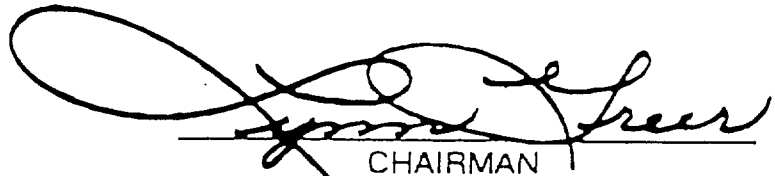
not request that the tariffs be suspended, since the above captioned tariffs must become effective April 15, 1997, pursuant to the FCC Order.

The Authority considered this matter at its regularly scheduled Conference held on April 15, 1997. Upon consideration of the entire record in this matter, the Directors unanimously determined that the intervention request of the Consumer Advocate should be granted; that Chairman H. Lynn Greer be appointed as a Hearing Officer to preside over a pre-hearing conference to be set after consultation with the parties herein; and that pending the outcome of the contested case the tariffs are approved as filed. Additionally, the Directors, after considering the reasons given by TDS for not filing appropriate tariffs, voted unanimously to require TDS to reduce rates \$81,700 to remove the existing subsidy to payphone operations. ||

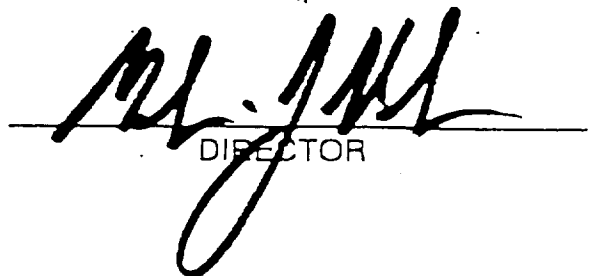
IT IS THEREFORE ORDERED:

1. That the tariff filings by all the Incumbent Local Exchange Companies listed in footnote 1 herein, effective April 15, 1997, are hereby approved pending the outcome of the contested case; |||
2. That Telephone Data Systems reduce its rates \$81,700 to eliminate the estimated subsidy to pay telephones from regulated services revenues;

3. That Chairman H. Lynn Greer serve as a Hearing Officer to preside over a pre-hearing conference which shall be set after consultation with the parties herein;
4. That the Petition to Intervene of the Consumer Advocate Division, Office of the Attorney General filed on April 14, 1997, is hereby approved;
5. That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
6. That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

  
CHAIRMAN

  
DIRECTOR

  
DIRECTOR

ATTEST:

  
EXECUTIVE SECRETARY



Carolina Telephone  
Centel-North Carolina  
Centel-Virginia  
United Telephone-Southeast

James B. Wright  
Senior Attorney

June 11, 1997

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

RE: Docket No. 97-00409  
Reclassification of Pay Telephones

Dear Mr. Waddell:

By letter dated June 6, 1997, United Telephone-Southeast, Inc. filed revised cost studies in the above docket. United also indicated it would later file revised tariffs to reflect the change in rates resulting from the small decrease in its subsidy calculation. United had earlier filed tariffs and cost studies with the Staff on May 19, 1997.

With the subsidy amount being so small, and the rates presently on file being subject to further revision as a result of this proceeding, United does not believe it is beneficial to refile tariffs which reflect such a minor change. XXX

The currently filed rates are more favorable to interexchange carriers than the new rates under revised tariffs would be. Accordingly, United no longer intends to file revised tariffs at this time.

Please contact Laura Sykora at 919/554-7323 or me at 919/554-7587 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "James B. Wright".  
James B. Wright

cc: Parties of Record  
Bob Wallace

#11043